

S 1428 IS

108th CONGRESS

1st Session

**S. 1428**

To prohibit civil liability actions from being brought or continued against food manufacturers, marketers, distributors, advertisers, sellers, and trade associations for damages or injunctive relief for claims of injury resulting from a person's weight gain, obesity, or any health condition related to weight gain or obesity.

**IN THE SENATE OF THE UNITED STATES**

**July 17, 2003**

Mr. MCCONNELL introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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**A BILL**

To prohibit civil liability actions from being brought or continued against food manufacturers, marketers, distributors, advertisers, sellers, and trade associations for damages or injunctive relief for claims of injury resulting from a person's weight gain, obesity, or any health condition related to weight gain or obesity.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the `Commonsense Consumption Act of 2003'.

**SEC. 2. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL OR STATE COURT.**

(a) IN GENERAL- A qualified civil liability action may not be brought in any Federal or State court.

(b) DISMISSAL OF PENDING ACTIONS- A qualified civil liability action that is pending on the date of the enactment of this Act shall be dismissed immediately by the court in which the action was brought or is currently pending.

## **SEC. 3. DEFINITIONS.**

In this Act:

(1) **ENGAGED IN THE BUSINESS**- The term `engaged in the business' means a person who manufactures, markets, distributes, advertises, or sells a qualified product in the person's regular course of trade or business.

(2) **MANUFACTURER**- The term `manufacturer' means, with respect to a qualified product, a person who is lawfully engaged in the business of manufacturing the product in interstate or foreign commerce.

(3) **PERSON**- The term `person' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) **QUALIFIED PRODUCT**- The term `qualified product' means a food (as defined in section 201(f) of the Federal Food Drug and Cosmetic Act (21 U.S.C. 321(f)).

(5) **QUALIFIED CIVIL LIABILITY ACTION**- The term `qualified civil liability action' means a civil action brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages or injunctive relief based on a claim of injury resulting from a person's weight gain, obesity, or any health condition that is related to weight gain or obesity, but shall not include--

(A) an action in which a manufacturer or seller of a qualified product knowingly and willfully violated a Federal or State statute applicable to the manufacturing, marketing, distribution, advertisement, labeling, or sale of the product, and the violation was a proximate cause of the claim of injury resulting from a person's weight gain, obesity, or health condition related to weight gain or obesity;

(B) an action for breach of contract or express warranty in connection with the purchase of a qualified product; or

(C) an action regarding the sale of a qualified product which is adulterated (as described in section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342)).

(6) **SELLER**- The term `seller' means, with respect to a qualified product, a person lawfully engaged in the business of marketing, distributing, advertising, or selling a qualified product in interstate or foreign commerce.

(7) **STATE**- The term `State' includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands,

and any other territory or possession of the United States, and any political subdivision of any such place.

(8) TRADE ASSOCIATION- The term `trade association' means any association or business organization (whether or not incorporated under Federal or State law) that is not operated for profit, and 2 or more members of which are manufacturers, marketers, distributors, advertisers, or sellers of a qualified product.

*END*